

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2518 OF 2006

Shirish Lingras & Ors.

..Petitioners.

Vs.

Maharashtra Housing & Area
Development Authority & Ors.

..Respondents.

....

Mr. Anirudha Joshi i/b L. J. Law for the Petitioners.

Mr. G.W. Mattos, AGP for the State.

Mrs. Shakuntala Mudbidri for Respondent Nos.3 and 4.

....

CORAM: DR. D.Y. CHANDRACHUD, J.

25th September, 2006.

P.C. :

1. The Petitioners have impugned in these proceedings a notice issued by MHADA on 8th September, 2006 and an order dated 21st September, 2006 passed under Section 95-A of the Maharashtra Housing and Area Development Act, 1976. The Petition was mentioned for early listing. The learned AGP appearing for the First and Second Respondents and counsel for Respondent Nos.3 and 4 are present before the Court. In these circumstances, on the joint request of the learned counsel the

Petition has been taken on Board and it has been called out for admission. During the course of the hearing, it has emerged that the grievance that has been raised on behalf of the Petitioners can be adequately resolved by issuing certain directions to the Third and Fourth Respondents. Counsel appearing for the Third and Fourth Respondents has fairly agreed to abide by the directions that would be issued hereinafter.

2. An order was passed by a Learned Single Judge of this Court (S.J. Vazifdar, J.) on 20th April, 2004. The order contained the following operative directions:

- “i) The ad-interim order dated 9-7-2003 is confirmed.
- ii) The Appellants are restrained from putting in possession any party or parties in any part of the building without putting the Respondent in possession of their final flats to be allotted to them.
- iii) The Appellants are further restrained from putting in possession any party or parties in any part of the building without the leave of this court.
- iv) The appellant shall however be at liberty to enter into Agreement with third parties for the sale of the flats in the building without putting such third parties in possession contrary to

this order.

v) The Registrar of this Court shall appoint an architect from the panel of this Court to measure the carpet areas in the flats in the original building which were in the occupation of each of the Respondents.

vi) The architect shall take the measurements in the presence of both the parties and in the presence of the Executive Engineer FN/GN Division, MHADA.

vii) In the event of the area being found to be more than the area of the flat finally allotted to the Respondents, the Appellant undertakes to compensate them at the rate of Rs.7,000/- per sq. ft.

viii) All the parties agree to accept the area that may be determined by the Architect.

by ix) Possession to third parties shall not be given the Appellant till the compensation if any, is also paid.

x) It is clarified that if the area allotted is more than what was in the occupation of the Respondents, the Respondents shall not be liable to compensate for the same in any manner whatsoever.

xi) The Appellate further undertakes to complete the construction and hand over possession of the respective tenements within 32 months from today."

3. A scheme for redevelopment is being carried out under Development Control Regulation 33(7). At the hearing of the Petition, it has been urged on behalf of the Petitioners that in terms of direction (vii) issued by this Court, the persons who are to be allotted alternate accommodation would be entitled to compensation at the rate of Rs.7,000/- per sq. ft. in the event that it is found that the area which was in their occupation in the erstwhile building was more than the area which is being allotted in the reconstructed building. Petitioners 4, 5 and 6 are the legal heirs of a tenant to whom one tenement jointly is made available by the developer while, Petitioners 7, 8 and 9 are similarly entitled to a tenement each in their own independent right. Each of the aforesaid Petitioners has shifted to transit accommodation. Learned counsel on their behalf stated before the Court that they would be willing to move to the tenements allotted in the newly constructed building of which partial occupation certificate has already been granted by the Municipal Corporation, provided the area of the newly constructed premises is measured in order to determine as to whether these Petitioners are being offered an

area less than what was in their occupation. In order to obviate any dispute in that regard, it has been agreed that Mr. A.B. Patwardhan who was appointed as Architect for the project under the order of this Court shall visit the site at 11.00 a.m. on 26th September, 2006 and shall ascertain the carpet area of the premises which are being offered to the aforesaid Petitioners (Petitioners 4, 5 and 6 on the one hand and Petitioners 7, 8 and 9). Counsel appearing for the Third and Fourth Respondents states before the Court that in the event that the area which is being allotted to the aforesaid Petitioners is found to be less than the area which was certified to be in their occupation originally in the erstwhile building, in such an event compensation at the rate of Rs.7,000/- per sq. ft. as envisaged in Clause (vii) of paragraph 9 of the order of this Court dated 20th April, 2004 shall be deposited before this Court in Appeal from Order 449 of 2003 and companion matters to abide by further directions of the Court. Counsel appearing for the Third and Fourth Respondents states that the aforesaid amount shall be deposited within a period of 48 hours of the aforesaid determination being communicated by the architect.

The architect shall communicate his determination to the concerned Petitioners on the one hand, and to the Third and Fourth Respondents on the other hand. The learned AGP states that the Executive Engineer of the First Respondent shall also remain present at the site when the architect takes measurements in terms of the aforesaid directions. Counsel appearing for Petitioners 4 to 9 states that the aforesaid Petitioners shall take possession of the permanent alternate accommodation that has been made available to them in the reconstructed building immediately after the measurements are carried out by the architect on 26th September, 2006 and within one week of the date of communication of his determination by the architect.

4. In so far as Petitioners 1, 2 and 3 are concerned, learned counsel appearing for the Third and Fourth Respondents states that the aforesaid Petitioners would not be required to vacate the transit accommodation that is in their possession until permanent accommodation is made available to them in terms of the order of the Court dated 20th April, 2004. Learned counsel

further states that until permanent alternate accommodation is made available, the transit accommodation in which Petitioners 1, 2 and 3 are in occupation shall not be demolished or endangered.

5. The parties are agreed that the determination of the area to be determined by the architect shall be final and shall not be called into question by any of the contesting parties. No further points are pressed on either side. Consequently the Petition shall by consent stand disposed of in the light of the aforesaid directions.